

Division of Insurance, Petitioner
v.
George Albert Palmer, Respondent

Decision and Order

I. Introduction and Procedural History

On April 30, 2004, the Division of Insurance (“Division”) filed an Order to Show Cause against George Albert Palmer because his insurance producer license in his resident State of Maine had been revoked for cause after he received convictions for the crimes of criminal threatening and criminal mischief. The Division seeks revocation of Palmer’s Massachusetts non-resident producer license, pursuant to G.L. c. 175, §§162R(a)(6), 162R(a)(9), and 162N(a)(1), for failure to maintain the qualifications for licensure. In addition, it asks for an order prohibiting Palmer from engaging in the business of insurance in Massachusetts.¹ The Commissioner of Insurance designated me as the presiding officer for this proceeding. Joseph P. Sullivan, Esq., represented the Division.

On April 30, 2004, a Notice of Procedure issued, scheduling a pre-hearing conference and hearing on the Order to Show Cause for June 1, 2004, and June 18, 2004,

¹ The Division requested in the Order to Show Cause that fines be assessed against Palmer, pursuant to the provisions of G.L. c. 175, §162R(a), but later waived its request for fines.

respectively. The notice directed Palmer to file an answer to the Order to Show Cause within 21 days. In addition, it advised him that failure to file an answer or to appear may result in the entry of an order of default, summary decision and/or decision on the pleadings against him for the relief requested in the Order to Show Cause. The Division filed a certificate of service, indicating that the notice and Order to Show Cause were sent by both first class U.S. Mail and certified mail, return receipt requested, to the last address for Palmer appearing in the Division's licensing records. The documents sent by certified mail were returned, without an indication as to why delivery was not achieved.

Palmer neither filed an answer nor appeared at the Division for the scheduled pre-hearing conference and hearing. Mr. Sullivan reported at the hearing that he attempted to contact Palmer on June 1, 2004, by telephone at the business listed for Palmer in the records of the State of Maine Department of Professional and Financial Regulation, Bureau of Insurance ("Maine Bureau of Insurance"), but he was informed that Palmer did not work at that company.

On June 18, the Division filed the following: a Motion for Summary Decision; a July 21, 2003 Maine Bureau of Insurance amended decision and order confirming the revocation of Palmer's insurance producer license on June 30, 2003; and a Superior Court of Aroostook County, Maine, Docket Record of Palmer's criminal record for criminal threatening and criminal mischief. In addition, the Division also filed a letter from Palmer's employer, stating that Palmer notified the company immediately of the charges against him, but that the company terminated his employment as the result of the conviction. The Division also filed a certificate of service, indicating that copies of its Motion for Summary Judgment were sent by both first class U.S. Mail and certified mail, return receipt requested, to the last address for Palmer appearing in the Division's records. On July 6, the Division reported that both of these mailings were returned to the Division due to an insufficient address.

To date, no communication has been received from Palmer regarding this proceeding.

II. Finding of Default

On the basis of the record before me, including the evidence that the notice and Order to Show Cause were sent via certified mail to Palmer at the address shown on the Division's licensing records, I conclude that the Division made reasonable efforts to ensure proper service. Notice of a hearing on the revocation of a license is deemed sufficient when sent postpaid by certified mail to the last business or resident address of the licensee appearing on the records of the Commissioner. G.L. c. 175, §174A; G.L. c. 4, §7 ¶44. In addition, the Division attempted to locate Palmer by contacting the address listed for him in the records of the Maine Bureau of Insurance. By his default, Palmer waives his right to proceed further with an evidentiary hearing, and I will consider the Division's Motion for Summary Decision on its Order to Show Cause.

III. Findings of Fact

On the basis of the record before me, I make the following findings of fact:

1. Palmer was first licensed by the Division as a non-resident insurance agent on July 19, 2000, and his license was subsequently converted to a non-resident insurance producer license, effective May 16, 2003.
2. The Division's licensing records state Palmer's non-resident insurance producer license was cancelled for non-renewal, effective November 26, 2003, and that he has no active producer appointments.
3. The records of the Maine Bureau of Insurance state that on or around February 2003, Palmer was convicted in the Maine Aroostook County Superior Court of the crimes of criminal threatening and criminal mischief. The records show that in the State of Maine, the crime of criminal threatening is classified as a Class C crime and the crime of criminal mischief is classified as a Class D crime.
4. The records of the Maine Bureau of Insurance state that Palmer's Maine resident insurance producer license was revoked for cause, effective June 30, 2003.
5. The records of the Maine Bureau of Insurance state that Palmer's criminal history also includes assault convictions on June 13, 1994, and August 12, 1999.

IV. Conclusion

The record shows that Palmer's insurance producer license, in his resident state of Maine, was revoked for cause because he was convicted of a Class C crime of criminal threatening. In Maine, a Class C conviction is akin to a felony conviction.² The right to sell, solicit or negotiate insurance as a licensed Massachusetts insurance producer is a privilege conferred by the Commissioner only upon those who demonstrate a fitness to carry out such duties. *See* G.L. c. 175, §§ 162H through 162X (qualifications and procedures for the licensing of insurance producers). Palmer's Class C conviction and the revocation of his Maine insurance producer license reflect upon his fitness to act as an insurance producer in Massachusetts. Both are independent causes to revoke or refuse to issue an insurance producer license under the Massachusetts Producer Law. G.L. c. 175, §162R(a)(6) (conviction of a felony); G.L. c. 175, §162R(a)(9) (revocation of an insurance license in any other state.) In addition, G.L. c. 175, §162N(a)(1) requires a non-resident producer to remain in good standing in his home state. Thus, on this record, I find that the Commissioner has cause to revoke any Massachusetts insurance license Palmer holds.

ORDER

Accordingly, after due notice and opportunity for hearing, it is

ORDERED: that the Division's Motion for Summary Decision is allowed for its claims that Palmer has failed to maintain the qualifications necessary to hold a producer license; and it is

FURTHER ORDERED: that pursuant to the authority granted in G. L. c. 175 §162R, any and all licenses issued to Palmer by the Division of Insurance of the

² A crime punishable by imprisonment for more than one year, or death, is considered a felony. BLACK'S LAW DICTIONARY (8th ed. 2004). In Massachusetts, a crime punishable by death or imprisonment in the state prison is a felony. G.L. c. 274, §1. All other crimes are misdemeanors. *Id.* Maine, however, does not use the specific terms "misdemeanor" or "felony" in its statutes, but instead classifies crimes by categories of seriousness A through E, with A being the most serious and E the least. Pursuant to the Maine Revised Statutes, Title 17-A, §1252, the term of imprisonment for a Class C crime is not to exceed five years in the state prison or nine months in the county jail. The term of imprisonment for a Maine Class D crime is less than one year in the county jail. Maine Revised Statutes, Title 17-A, §1252.

Commonwealth of Massachusetts are revoked as of this date, and he shall return to the Division all insurance licenses, which are in his custody, control, or possession; and it is

FURTHER ORDERED: that pursuant to the authority granted in G.L. c. 175, §166B, Palmer shall dispose of any interest he may have as a proprietor, partner, stockholder, officer or employee of any licensed insurance producer; and it is

FURTHER ORDERED: that pursuant to G.L. c. 175, §166B, Palmer is from the date of this order prohibited from transacting any insurance producer business or accepting employment in any insurance producer business in the Commonwealth of Massachusetts, without prior approval of the Commissioner, whether such interest or employment is as a manager, owner, partner, stockholder, officer, director, or employee.

This decision has been filed on this day, in the office of the Commissioner of Insurance.

SO ORDERED.

Date: September 7, 2004

_____/s/
Susan H. Unger
Presiding Officer

Pursuant to G.L. c. 26, §7, this decision may be appealed to the Commissioner of Insurance.